

Massachusetts Part B 2008 Verification Visit Letter
Enclosure

I. General Supervision System

Critical Element 1: Identification of Noncompliance

Does the State have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components?

Verification Visit Details and Analysis

The State uses its general supervision system, including its dispute resolution process, cyclical monitoring, statewide data systems, budget reviews, and audit reports, to identify noncompliance.

The Massachusetts Department of Elementary and Secondary Education (MASSDE) monitors its LEAs on a six-year cycle. In the first year of a monitoring cycle, LEAs participate in MASSDE's Comprehensive Program Review (CPR), which covers all Federal programs. Special education is a significant component of the CPR. As a first step, the LEA may conduct a web-based self-assessment approximately one year prior to the State's on-site visit. Currently, the self-assessment is voluntary; however, MASSDE reported that the State will make the self-assessment mandatory beginning with the 2010-2011 school year. Approximately eight weeks prior to the on-site visit, the leader of the monitoring team reviews the self-assessment data and LEA policies and procedures and conducts a desk audit of State-collected data. This review helps to identify any areas that the State could add to the core criteria used in monitoring all LEAs. In addition, the team leader selects a sample of student records for the LEA to review. As a second step, a team of MASSDE staff visits the LEA to interview, observe, and review records on-site. After the initial review and the on-site visit, MASSDE issues a draft report and gives the LEA the opportunity to respond to any factual inaccuracies in the draft report. MASSDE's procedures require that the final report be issued to the LEA 60 days after the on-site visit.

MASSDE conducts a mid-cycle review of each LEA in the third year of the monitoring cycle. The purpose of the mid-cycle review is to determine the effectiveness of corrective actions previously approved. Another focus of the mid-cycle review is to assess the LEA's progress in implementing changes to State or Federal requirements or to review current data from the Student Information System (SIMS). Also, during the mid-cycle review, the SEA may find it necessary to follow up on the LEA's Annual Performance Report (APR), on issues discovered during the corrective action process from the CPR, and/or on issues from complaints or due process hearings. The State explained that unlike the CPR, the mid-cycle review is focused entirely on special education requirements and does not include other Federal program requirements. During the 2006-2007 school year, MASSDE conducted mid-cycle reviews of 47 LEAs and issued reports to those LEAs.

The Special Education in Institutional Settings Unit within the Office of Special Education Policy and Planning (SEPP) reviews the data for Indicators 11, 12, and 13 in APR submissions. If data demonstrate noncompliance, the SEPP makes written findings and

prescribes a corrective action plan. In instances where SEPP has reason to believe there is noncompliance, SEPP requires the LEA to: review its policies, procedures, and practices; report the results of its review of those policies, procedures, and practices; and report on the actions taken, to respond to the review.

Finally, SEPP provides oversight for special education services in State facilities operated by the Departments of Mental Health, Public Health, Youth Services and County Houses of Correction. MASSDE monitors these agencies and does not monitor individual facilities. MASSDE assigns one staff person who is responsible for conducting monitoring visits on a six-year cycle. MASSDE uses a separate monitoring instrument to review the compliance of programs for students with disabilities in State-operated facilities.

During the on-site visit, MASSDE also reported that it is in the process of instituting a system to identify and track issues, corrective actions identified in the self-assessment, and timelines. MASSDE reported that staff positions are being restructured so that staff members responsible for monitoring are relieved of other responsibilities. MASSDE also is in the process of creating a web-based self-assessment. MASSDE anticipates that these measures will enhance the quality of its monitoring system.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components. OSEP cannot, however, without collecting data at the local level, determine whether the State's procedures are fully effective in identifying noncompliance in a timely manner.

Required Actions/Next Steps

No action is required.

Critical Element 2: Correction of Noncompliance

Does the State have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner?

Verification Visit Details and Analysis

The State reported that LEAs are required to develop and submit a corrective action plan (CAP) to the State for approval within 20 business days of receiving MASSDE's final monitoring report. MASSDE provides extensive training to staff and LEAs regarding the content of quality CAPs. MASSDE's team leader for the monitoring visit meets with LEA staff, including the superintendent, within one week of issuing the final report to review the findings and to provide technical assistance on developing effective corrective actions. MASSDE directs the LEA on what must be included in the CAP if it cannot approve the CAP that the LEA proposes.

MASSDE requires LEAs to submit progress reports that include data that measure improvement and effectiveness of the corrective actions in correcting noncompliance. The first progress report is due three months from the State's approval of the CAP, and a second

progress report is due three to four months later. During the 2006-2007 school year, MASSDE issued 67 CPR and 47 mid-cycle monitoring reports. OSEP reviewed nine of these reports and interviewed MASSDE personnel who conducted four CPR and five mid-cycle monitoring visits. MASSDE staff reported that they verified correction of noncompliance based on progress reports with documentation from LEAs, in accordance with each approved CAP. In some cases, MASSDE staff reported that MASSDE goes on-site to collect additional data to verify that noncompliant practices have been corrected. MASSDE issued letters notifying the LEAs that noncompliance was corrected based on progress reports and any additional information it collected on-site.

MASSDE staff reported that during the 2008-2009 school year, it has instituted several new procedures to ensure that noncompliance is corrected within one year from the identification of noncompliance. Specifically, MASSDE has shortened its timelines for LEAs to correct noncompliance from one year to nine months from the identification of noncompliance. If noncompliance has not been corrected within nine months, the LEA has three months to correct any outstanding issues. The monitoring chairperson meets with the LEA on any outstanding findings after nine months, and MASSDE provides closer oversight to ensure that correction occurs within the one-year timeline. MASSDE also reported that during the 2008-2009 school year, MASSDE piloted an electronic process for LEAs to submit, and for the State to approve and evaluate the status of the corrective actions. MASSDE administrators indicated that the electronic CAP was instituted to strengthen MASSDE's capacity to monitor timelines and measure LEAs' progress in correcting noncompliance.

If the above measures are insufficient to correct the noncompliance, MASSDE administrators indicated that there are a number of sanctions/enforcement options that can and have been utilized. These include: (1) threatening to withhold or delay Federal funds; (2) calling a meeting with appropriate parties to explain MASSDE's concerns; (3) bringing the issues to the attention of the superintendent or school committee; (4) appointing an outside "consultant"/special master with authority to make needed changes; or (5) withholding IDEA funds from the LEA.

In its Federal Fiscal Year (FFY) 2006 Annual Performance report (APR), the State's reported data for Indicator 15 were that 63 percent of findings of noncompliance identified in FFY 2005 were corrected in a timely manner in FFY 2006. Based on OSEP's review of 2006-2007 monitoring reports and interviews with MASSDE personnel during the verification visit, OSEP finds that MASSDE is not meeting its obligation to ensure that all noncompliance is corrected in a timely manner, not to exceed one year from identification. States must ensure that noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification. This timeline begins the date on which the State informs an LEA in writing that it has concluded that the LEA is in noncompliance.

During the verification visit, OSEP's review of nine letters indicated that correction for six LEAs occurred more than one year from the date the final monitoring reports containing the findings were issued. Also, MASSDE's delays in verifying correction ranged from two to eleven months after the one-year timeline had run. This practice is inconsistent with MASSDE's responsibility to ensure timely correction of identified noncompliance within

one year of the State's identification. The State's notice to the LEA, verifying correction, could be issued later than one year from the date of the written notification of findings of noncompliance, but the LEA must have demonstrated that correction occurred, and the State verified such correction, within the one-year timeline.

Regarding the manner in which the State verified correction, OSEP found that MASSDE indicated that an LEA had corrected noncompliance where the noncompliance had not been corrected. Although MASSDE indicated that the corrective action was "closed" and that no further action was required, the letter to the LEA stated that the LEA had achieved only 70% compliance. In three other letters verifying correction, OSEP found that MASSDE approved corrective actions, which did not appear to be sufficient to address the noncompliance. For example, in one report where MASSDE found that an LEA was not sending periodic reports on the student's progress toward meeting the annual goals in the IEP to parents pursuant to 34 CFR §300.320(a)(3)(ii), MASSDE only required the LEA "to submit an agenda and sign-in sheet for training on progress reports and content" as its corrective action without also requiring a change in policies, practices, and procedures to ensure that periodic progress reports were provided. Therefore, OSEP is concerned that the approved corrective action was insufficient to ensure that the LEA's noncompliant practice was corrected.

MASSDE administrators acknowledged that the sample of monitoring reports and letters OSEP reviewed, accurately reflected the continuing difficulty MASSDE has experienced in ensuring the timely correction of noncompliance. MASSDE administrators further acknowledged that the data MASSDE will report in the February 2, 2009 FFY 2007 APR will likely be comparable to the 63 percent data the State reported under Indicator 15 in its FFY 2006 APR.

MASSDE reported to OSEP that it is in the process of making a number of changes to improve its capacity to ensure the correction of identified noncompliance in a timely manner, not to exceed one year from identification. These changes include: (1) reorganizing the monitoring unit so that personnel are only responsible for the monitoring process and can verify completion of CAPs; (2) training staff on writing better CAPs; (3) shortening the timelines for completing CAPs; (4) conducting regional training of LEAs on writing better CAPs; (5) strengthening oversight systems for internally tracking and monitoring the status of the correction of noncompliance in LEAs; and (6) instituting an electronic CAP.

However, MASSDE administrators also acknowledged that these changes have not been in effect for enough time to have an impact on MASSDE's data on timely correction of noncompliance identified during the 2006-2007 school year.

OSEP Conclusions

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the State must ensure that identified noncompliance is corrected in a timely manner. Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has not demonstrated that it has a general

supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner. However, the State reported to OSEP that it believes that the modifications it has made to its monitoring system will result in correction of noncompliance in a timely manner. Because these modifications were not implemented until the 2008-2009 school year, OSEP cannot determine whether they will result in the timely correction of noncompliance.

Required Actions/Next Steps

With its FFY 2008 APR, due February 1, 2010, MASSDE must provide the following data from monitoring visits conducted during FFY 2007, including: (1) the date of the on-site monitoring visit; (2) the date of the final report finding noncompliance; (3) the date that MASSDE verified that the noncompliance was corrected and notified the LEA of the correction; and (4) a sample of 10 CAPs with approved activities that address correction of the noncompliant practices based on the statutory and/or regulatory requirements at issue and the root cause(s) of the noncompliance.

Critical Element 3: Dispute Resolution

Does the State have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA?

Verification Visit Details and Analysis

State Complaints

MASSDE's complaint system handles an array of complaints regarding State and Federal requirements. These include complaints alleging that a public agency has violated a requirement of Part B of the IDEA or the Part B regulations, in accordance with 34 CFR §§300.151-300.153. In Massachusetts, complaints, either written or oral, are filed with an intake coordinator. A model form is sent to the complainant to complete and sign, unless the complaint filed with the intake coordinator already contains the information required in 34 CFR §300.153(b) for State complaints that allege that a public agency has violated a requirement of Part B of IDEA. MASSDE's Program Quality Assurance (PQA) Unit is responsible for complaint investigations and sends a letter informing the LEA of the complaint and requests a response from the LEA that contains documentation that addresses the issues in the complaint. The LEA has between 15 and 20 days to respond to the request. Because of the large number of special education complaints (approximately 200 during 2007-2008) MASSDE receives, it developed an electronic tracking system to monitor complaint timelines and the resolution of any complaint findings. MASSDE designates a supervisor to oversee complaint staff, monitor timelines, review letters of finding, and review requests for timeline extensions. MASSDE administrators reported that the PQA reorganized recently to improve the timeliness of complaint resolutions and designated specific staff who are exclusively responsible for investigating complaints. MASSDE reported data in the FFY 2006 APR for Indicator 16 for timely complaint resolutions were 96.1 percent. However, OSEP has determined that not all MASSDE's procedures are consistent with the timely complaint resolution requirements in Part B of the IDEA.

The Part B regulations at 34 CFR §300.152(a) require each State to include in its State complaint procedures a time limit of 60 days, after the complaint is filed under 34 CFR

§300.153, to initiate and complete the activities listed in 34 CFR §300.152(a)(1) through (5), unless, in accordance with 34 CFR §300.152(b)(1)(i)-(ii), the time limit is extended because exceptional circumstances exist with respect to a particular complaint; or the parties agree to extend the time to engage in mediation or other alternative dispute resolution, if available in the State.

During the verification visit, OSEP interviewed MASSDE administrators, reviewed MASSDE's complaint log for the 2007-2008 school year, and examined a sample of six complaint files from that time period. OSEP found, based on MASSDE's complaint log, that a letter of findings was issued for 198 special education complaints during the 2007-2008 school year. Thirty-three of these complaints, or approximately 17 percent, had extended timelines. OSEP reviewed a sample of six complaint files with extended timelines and found that not all of those complaints had allowable extensions. In one instance, the letter extending the timeline was not issued until one day after the 60-day timeline had expired. In another file, the letter granting the extension failed to specify the length of the extension. In two files indicating that the timeline was extended because of exceptional circumstances, OSEP found that the time limit was not extended because of an exceptional circumstance with respect to the particular complaint. Instead, the two complaints were extended 30 days to permit the district to gather and provide additional information. In one of these instances, the district needed to provide a related service provider service log, which was produced two days after the 60-day timeline; yet, MASSDE's decision on the complaint was not issued until the end of the 30-day extension. In the two remaining files that OSEP reviewed, the timelines were properly extended.

Due Process Hearings

The Bureau of Special Education Appeals (BSEA) is responsible for managing and conducting due process hearings. It employs two administrators and seven full-time hearing officers. The State supports training for hearing officers and provides interested hearing officers the opportunity to attend national and local trainings. Once a request for a due process hearing is received, the request is logged, a determination is made whether an expedited hearing is required, and a hearing officer is assigned. If the request is not for an expedited hearing, an automatic hearing date is set for 35 days after the request, or 20 days after the request if the LEA initiates the request. MASSDE reported that it has established a 35-day time period so that resolution sessions under 34 CFR §300.510 can occur. BSEA makes adjustments depending on circumstances, such as scheduling conflicts related to the due process complaint and extension requests. MASSDE reported that recently, BSEA is requiring hearing officers to schedule a conference call with the parties 19 days after the request to help monitor the resolution session process and to schedule a prehearing conference, if necessary. MASSDE's FFY 2006 reported data for timely due process hearing resolutions under Indicator 17 was 91 percent. Of the 618 due process hearing requests that MASSDE reported receiving during the 2007-2008 school year, 19 were fully adjudicated (18 within the 45-day timeline and 1 within an allowable extension). However, OSEP has determined that MASSDE does not have procedures that are sufficient to ensure that LEAs convene timely resolution meetings, or procedures to ensure compliance with due process hearing timelines for due process complaints that do not concern disciplinary matters in accordance with 34 CFR §300.515(a).

The Part B regulations, at 34 CFR §300.510(a)(1), require that, within 15 days of receiving notice of a parent's due process complaint and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint. The purpose of the resolution meeting is for the parent and the LEA to attempt to resolve the parent's due process complaint prior to conducting a due process hearing. See 34 CFR §300.510(a)(2). Similarly, the LEA must convene a resolution meeting within seven days of receipt of a parent's due process complaint requesting an expedited due process hearing on a disciplinary matter pursuant to 34 CFR §300.532(c)(3)(i). A resolution meeting is a required step prior to the initiation of a due process hearing on the parent's due process complaint, unless the parent and the LEA agree in writing to waive the resolution session, or the parent and the LEA agree to use the mediation process in 34 CFR §300.506. 34 CFR §§300.510(a)(3) and 300.532(c)(3). If the LEA does not resolve the complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, or within 15 days of receipt of the due process complaint regarding a disciplinary matter, the due process hearing may occur. 34 CFR §§300.510(b)(1) and 300.532(c)(3)(ii).

For due process complaints that do not involve disciplinary matters, the due process hearing timeline commences at the conclusion of the 30-day resolution process, or earlier or later, if one of the circumstances in §300.510(c) is present. 34 CFR §300.510(b)(2).¹ Under 34 CFR §300.515(a), a final decision in a due process hearing must be reached and mailed to the parties not later than 45 days after the expiration of the 30-day resolution period under §300.510(b), or the adjusted time periods described in §300.510(c).

OSEP's review of documents and interviews with staff indicated that the State does not have procedures for ensuring compliance with the requirement that the LEA convene a resolution meeting within 15 days from the date of receipt of the parent's due process complaint, or within 7 days of receipt of the parent's due process complaint filed pursuant to 34 CFR §300.532(a) on a disciplinary matter, unless the parties agree in writing to waive the resolution meeting or agree to use the mediation process pursuant to 34 CFR §300.506. Because the 30-day resolution process is in addition to the 45-day due process hearing timeline for due process complaints that do not involve disciplinary matters, MASSDE cannot ensure that a final decision in a due process hearing is reached and mailed to the parties not later than 45 days after the expiration of the 30-day resolution period under 34 CFR §300.510(b) or the adjusted time periods described in 34 CFR §300.510(c). Although MASSDE reported that 473 resolution sessions occurred during the 2007-2008 school year, an administrator for the BSEA stated that these data are "inferential" because the BSEA had no method to accurately track whether resolution sessions had occurred. OSEP reviewed a sample of nine hearing files. Only one of the nine files contained any documentation that a resolution session had occurred. MASSDE reported that the BSEA recently added the 19-day conference call to its process and requires the hearing officer to include in the hearing

¹ In the disciplinary context, there is a 15-day resolution process. 34 CFR §300.532(c)(3). The SEA or LEA must arrange for an expedited due process hearing which must occur within 20 school days of the date that the complaint requesting the hearing is filed, and the hearing decision must be issued within 10 school days after the hearing. 34 CFR §300.532(c)(2).

file a form documenting that a resolution session convened, or the parent and LEA agreed to waive the meeting or use the mediation process. However, because BSEA only implemented this process prior to OSEP's visit, OSEP cannot determine whether it will be sufficient to address the noncompliance identified above.

Mediation

The BSEA also administers the mediation process and has one administrator and eight full-time mediators. All mediators have ten years of mediation experience and at least five years of experience in special education. During the last school year, MASSDE reported that there were 906 requests for mediation. Eighty-four percent of those requests reached settlement through mediation agreements. MASSDE administrators noted that the number of requests for mediation has steadily increased over the years, which they attribute to the success and quality of their mediation program.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP determined the State has not demonstrated that it has procedures and practices that are reasonably designed to implement all of the dispute resolution requirements of IDEA. Specifically, OSEP finds that the State has failed to: (1) demonstrate compliance with requirements in 34 CFR §300.152(a) and (b)(1) for timely complaint resolutions; (2) demonstrate compliance with the requirement that LEAs convene timely resolution sessions pursuant to 34 CFR §§300.510(a) and 300.532(c)(3)(i); and (3) demonstrate compliance with the requirement in 34 CFR §300.515(a) that the 45-day due process hearing timeline for due process complaints that do not involve disciplinary matters must begin after the expiration of the 30-day resolution period under §300.510(b) or the adjusted time periods described in 34 CFR §300.510(c).

Required Actions/Next Steps

In the FFY 2008 APR, due February 1, 2010, MASSDE must provide the following documentation:

- a sample of ten State complaints that have been extended, including the letter of complaint, the letter extending the complaint, and the final written decision (or disposition if the complaint was closed without a written decision); and
- MASSDE's revised procedures ensuring that an extension of the 60-day timeline for complaint resolutions is granted only if the requirements in 34 CFR §300.152(b)(1) are satisfied—that is, the 60-day timeline is extended only if exceptional circumstances exist with respect to a particular complaint; or the parties agree to extend the time to engage in mediation or other alternative dispute resolution. The procedures must include MASSDE's criteria for extending the 60-day timeline for complaint resolutions and the circumstances under which the 60-day timeline may be extended.
- With respect to due process timelines, MASSDE must provide the following:
 - documentation demonstrating that MASSDE has procedures to ensure that LEAs convene a resolution session within 15 days of receipt of the parent's due process complaint, or within seven days of receipt of the parent's due process complaint on a disciplinary matter, and that timely resolution sessions have occurred

- consistent with these procedures, unless the parent agrees in writing to waive the resolution meeting or the parties agree to engage in mediation; and
- if the resolution process is unsuccessful in resolving the parent's due process complaint, documentation demonstrating that the 45-day due process hearing timeline commences at the expiration of the 30-day resolution period under 34 CFR §300.510(a), or within the adjusted time periods described in 34 CFR §300.510(c).

Critical Element 4: Improving Educational Results

Does the State have procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities?

Verification Visit Details and Analysis

In interviews with OSEP staff during the verification visit and documentation available on the State's website, MASSDE reported its multiple initiatives to improve the educational results and functional outcomes for children with disabilities. The State has aligned its goals for the performance of children with disabilities for graduation with regular diploma, dropouts, and the performance of children with disabilities on the State assessment in its State Performance Plan (SPP) with the performance standards for children in the general education program.

MASSDE has numerous professional development activities and academic support programs available to accomplish the above goals. The Project FOCUS Academy provides graduate level courses to Massachusetts educators in areas such as post-secondary outcomes, positive behavioral interventions, and Universal Design for Learning. Professional Summer Institutes are offered to provide free professional development for special and general educators statewide. Through the State Personnel Development Grant, MASSDE, in partnership with other State agencies and organizations, developed a statewide on-line professional development system that is accessible to all educators in the State.

The State has devoted considerable resources to improving performance of students with disabilities on the Massachusetts Comprehensive Assessment System (MCAS), the statewide assessment. MASSDE holds workshops throughout the year to train administrators and teachers to administer the MCAS with and without accommodations, and the MCAS Alternate Assessment. The performance of students with disabilities on the MCAS and graduation drives the allocation of instructional and other school resources. MASSDE reports publicly on the participation and performance of children with disabilities on State and districtwide assessments consistent with 34 CFR §300.160(f).

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures and practices that are reasonably designed to improve educational results and functional outcomes for all children with disabilities.

Required Actions/Next Steps

No action is required.

Critical Element 5: Implementation of Grant Assurances

Does the State have procedures and practices that are reasonably designed to implement selected grant assurances (i.e., monitoring and enforcement, significant disproportionality, private schools, CEIS, NIMAS and assessment)?

Verification Visit Details and Analysis

Public Reporting and Determinations

As a part of its monitoring and enforcement responsibilities under section 616 of the IDEA and 34 CFR §§300.600 and 300.602, each State must annually report to the public on the performance of each LEA against the State's SPP/APR targets and must make an annual determination for each LEA. MASSDE meets this public reporting requirement by publishing a district profile for each LEA on the SEA's website, in which the State reports the LEA's performance against targets in the State's SPP. For local reporting on Indicators 8, 11, 13, and 14, MASSDE uses a cohort model to collect data. This means that in any given year, new data is reported for one-quarter of the local agencies on each of these four indicators. MASSDE reports annual data for each LEA on Indicator 12 - Part C to Part B transition.

MASSDE makes annual determinations for each LEA. According to a MASSDE guidance document regarding local determinations, Massachusetts "has chosen to link its special education determinations to the student performance indicators used in determining accountability under the No Child Left Behind Act (NCLB)." In addition to special education compliance monitoring activity, MASSDE uses the Adequate Yearly Progress (AYP) Reports and accompanying accountability status as a basis for making overall determinations on special education for each local educational agency. (See Memorandum from David P. Driscoll, Commissioner of Education, to Superintendents, Directors of Charter Schools, and Other Interested Parties (May 27, 2007).) Although MASSDE indicated in interviews with OSEP staff that local performance on the other APR indicators may result in adjustments to local determinations, the referenced guidance does not indicate that MASSDE applies the multi-factored approach described below in making its local determinations. For example, if the district meets AYP, the guidance indicates that the State determines that the district "meets special education requirements." There is no indication that the State inquires about other factors relevant to the district's performance and compliance status before making its local determination for that district. However, OSEP learned through interviews with a MASSDE administrator and review of the above-referenced memorandum that a district could be moved into the category of "needs substantial intervention" from any of the other three determination categories based upon "findings of egregious non-compliance" in special education.

A State's annual determination process, under sections 616(a) and (e) of IDEA, must, at a minimum, consider: (1) an LEA's performance on all SPP/APR compliance indicators; (2) whether an LEA submitted valid, reliable and timely data for each indicator; (3) LEA specific audit findings; and (4) any uncorrected noncompliance from other sources. (See

Determinations FAQs dated 10/19/2006 and 12/4/2007 and OSEP Guidance on Determinations of the Status of Local Programs by State Agencies under Parts B and C of IDEA dated March 7, 2007.)

Private Schools

The State monitors the provision of special education and related services for students that are parentally-placed in private schools through its data reporting, grant assurance process, and program monitoring reviews. Each LEA must provide an annual assurance that it will adhere to requirements of Part B of the IDEA regarding parentally-placed private school children with disabilities in 34 CFR §§300.130 through 300.144. LEAs are required to maintain a count of parentally-placed students who receive special education and related services through SIMS. The State monitors each LEA through its Comprehensive Program Review (CPR) process to ensure that all policies, procedures, and practices regarding special education and related services for parentally-placed private school children with disabilities are implemented in accordance with 34 CFR §§300.130 through 300.144. Specifically, the State monitors to ensure that LEAs are expending a proportionate amount of Federal Part B funds on the provision of special education and related services for parentally-placed private school children with disabilities in accordance with 34 CFR §300.133, and that LEAs maintain documentation of timely and meaningful consultation with private school representatives and representatives of parentally-placed private school children with disabilities during the design and development of special education and related services for parentally-placed private school children with disabilities in accordance with 34 CFR §300.134.

Significant Disproportionality and Coordinated Early Intervening Services (CEIS)

The State collects and examines data for each LEA to determine if significant disproportionality based on race and ethnicity is occurring in the State and in the LEAs of the State. The determination is made with respect to the identification of children as children with disabilities, including identification in specific disability categories, the placement of these children in particular educational settings, and the incidence, duration, and type of disciplinary actions in accordance with 34 CFR §300.646(a). If the State makes a determination of significant disproportionality based on its examination of an LEA's data, the State requires the LEA to: (1) conduct a review, and if appropriate, revision of policies, procedures, and practices used in identification, placement, or discipline of children with disabilities to ensure compliance with Part B; (2) reserve 15 percent of Part B funds for CEIS; and (3) report publicly on the revision of policies, procedures, and practices, consistent with 34 CFR §300.646(b). MASSDE currently determines significant disproportionality for any LEA with a weighted risk ratio or alternate risk ratio exceeding 5.0 for the report year and the three prior years, whose risk ratio is growing more disproportionate in each of those four years. MASSDE uses its SIMS data from January through February for the current school year and compares it to the previous three school years in making its annual determinations. MASSDE reported that it provided technical assistance to 19 LEAs, whose risk ratio exceeded the 5.0 level, to proactively address issues before the LEAs reached the threshold for significant disproportionality.

OSEP recognizes that States have discretion in defining significant disproportionality and may consider data from multiple years so long as annual determinations of significant

disproportionality can be made. However, OSEP is concerned that MASSDE's definition of significant disproportionality (an LEA must have a weighted risk ratio or alternate risk ratio exceeding 5.0 for the report year and the three prior years and the risk ratio is growing more disproportionate in each of those four years) sets the bar too high and makes it likely that no LEAs will be identified with significant disproportionality. In fact, MASSDE has not identified significant disproportionality in any LEAs for the last two years using this definition. The Data Accountability Center (DAC) has a guidance document, entitled "Methods for Assessing Racial/Ethnic Disproportionality in Special Education: A Technical Assistance Guide" (July 2007), on methods for assessing disproportionality at <https://www.ideadata.org/Products.asp>. We suggest that MASSDE review the guidance and/or seek DAC's assistance to determine if it can develop a statistically sound definition of significant disproportionality based on numerical analysis of data that encourages LEAs to address the racial or ethnic significant disproportionality in special education that they face.

MASSDE provided evidence that it has a process in place for ensuring that Federal requirements in 34 CFR §300.226 are met if a district provides CEIS, regardless of whether it is required to do so. If a district is using Part B funds for CEIS, the district, as part of the budget process, is required to report how the funds are spent, the number of children served, and the subsequent number of children found eligible for special education and related services. In addition, a staff person from SEPP is assigned to work with each district to ensure program requirements are being met. MASSDE reported during FFY 2007 that seven LEAs voluntarily opted to implement CEIS.

NIMAS

The State has adopted the National Instructional Materials Accessibility Standard (NIMAS) and coordinates with the National Instructional Materials Access Center (NIMAC) in accordance with 34 CFR §300.172. MASSDE ensures that instructional materials are provided to blind persons and other persons with print disabilities in a timely manner, consistent with 34 CFR §300.172(a)(1). MASSDE has designated one staff person in the Information Services Unit to ensure that blind persons and other persons with print disabilities receive required instructional materials in a timely manner. LEAs are required to sign an assurance in their consolidated applications to participate in NIMAS and MASSDE has provided guidance through administrative directives to LEAs. Agencies may choose to opt out of NIMAC. MASSDE reported that three LEAs chose to opt out of NIMAC last school year, but only one LEA opted out during the 2008-2009 school year.

Because textbook purchases and decisions are made at the local level in Massachusetts, MASSDE only provides information and resources to assist LEAs in providing accessible materials to children with disabilities. Massachusetts provides funding to two organizations to provide accessible materials to LEAs: the Accessible Instructional Materials Library produces Braille and large print, and Recording for the Blind and Dyslexic produces audio books. The Accessible Instructional Materials Library is the main NIMAC authorized user. MASSDE provides information about how to obtain accessible instructional materials on its website and refers LEAs to the Accessible Instructional Materials Library, which can

download book titles in an accessible format or assign book titles to authorized media producers, as needed.

Assessment

The State monitors LEAs through its CPR process to ensure that LEAs comply with Part B requirements for statewide and districtwide assessments in accordance with 34 CFR §300.160. LEAs receive on-site training in October and February regarding the Massachusetts Comprehensive Assessment System (MCAS) participation requirements, accommodations, alternate assessments, IEP decision-making, and related topics. The State-mandated IEP process requires IEP teams to make detailed determinations as to how each student with a disability will participate in the MCAS, including the use of test accommodations and participation in the alternate assessment. The State's public reporting on the participation of children with disabilities in statewide assessments occurs consistent with 34 CFR §300.160(f). MASSDE holds schools and LEAs accountable for their performance on the MCAS by setting annual targets and uses assessment data in making its determinations regarding AYP.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP believes that, with the exception of the annual local determinations process, the State has procedures and practices that are reasonably designed to implement selected grant assurances (i.e., monitoring and enforcement, significant disproportionality, private schools, CEIS, NIMAS and assessment). OSEP cannot, however, without also collecting data at the State and local levels, determine whether these procedures and practices are sufficient to ensure that LEAs in the State effectively implement these selected grant assurances. OSEP finds that when making annual determinations on the performance of their LEAs, the State does not consider an LEA's performance on all SPP/APR compliance indicators, whether an LEA submitted valid and reliable data for each indicator, LEA-specific audit findings, and any uncorrected noncompliance from any source.

Required Actions/Next Steps

Within 60 days from the date of this letter, the State must provide documentation that, consistent with sections 616(a) and 616(e) of IDEA, it has revised its procedures for making future annual determinations on the performance of its LEAs to include consideration of an LEA's performance on all SPP/APR compliance indicators, whether an LEA submitted valid and reliable data for each indicator, LEA-specific audit findings, and any uncorrected noncompliance from any source.

II. Data System

Critical Element 1: Collecting and Reporting Valid and Reliable Data

Does the State have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner?

Verification Visit Details and Analysis

The principal method MASSDE uses for collecting and reporting data to OSEP is the statewide SIMS. This is a web-based application used to collect individual educational data on all students, including students with disabilities, across Massachusetts. Through SIMS, MASSDE assigns unique identifying numbers to each student upon enrollment in school. There are 52 data elements. Each LEA enters information on its students into a local student information database. The State has a process for certifying that local software meets State specifications. The State uploads files into the State system from local applications three times a year. There are 175 business rules to ensure accuracy of the information. The data system immediately generates error reports that require resolution before the data is accepted by the State as "final." After the State accepts the data, the data system generates a series of summary reports that the LEA must review and the local superintendent must sign, certifying the accuracy of the data. In addition, MASSDE runs a series of logic checks on the data to provide another level of validation. If these checks generate anomalies, the local data manager is contacted to provide an explanation or correction.

MASSDE collects personnel data through the Educator Personnel Management System (EPIMS). MASSDE instituted this system during the 2007-2008 school year to collect data on professional staff in the State. The system permits MASSDE to collect data at an individual level since each person is assigned a personal identifier when they are entered into the system. The process used to ensure data validity and reliability in EPIMS is similar to SIMS. LEAs collect the data using their own software and submit files to MASSDE once a year in October. The system runs a series of approximately 100 error checks before accepting the data. The system also generates instantaneous error messages, which the LEAs must correct before submitting the data to the State.

The third data system, the School Safety and Discipline Report (SSDR), collects discipline data for all students across the State and is used for different reporting purposes, including collecting data on students who receive special education to meet reporting requirements for section 618 of the IDEA. The on-line form is available for school personnel to enter the information throughout the year. Each student is identified using the same unique identifier as is used for SIMS. The data is exported to MASSDE at least once per year.

To ensure the validity and reliability of data collected, MASSDE provides guidance and training to LEAs on data collection and management. The data collection unit holds a training series throughout the State in August and September. Each LEA has an assigned contact in the data unit that the LEA can call as questions and problems arise during the year. In addition, training materials and information are available on MASSDE's website for reference and information.

As a part of the verification visit, OSEP specifically inquired into the State's guidance and data collection methodology for SPP/APR Indicators 4, 8, 9, 10, 11, 12, 13, and 14. The State provided information to demonstrate that these methodologies were reasonably designed to provide valid and reliable data for these indicators.

MASSDE has recently purchased a license for a “data warehouse” that can be utilized by LEAs to store their data. Approximately 25% of the local agencies are using the data warehouse to store seven years’ worth of SIMS and EPIMS data. MASSDE believes that local agencies will increasingly use this service. MASSDE believes that the statewide data warehouse should strengthen MASSDE’s capacity to collect and report valid and accurate data and information to the Department and the public in a timely manner.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes that the State has a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner. OSEP cannot, however, without also conducting a review of data collection and reporting practices at the local level, determine whether all public agencies in the State implement the State’s data collection and reporting procedures in a manner that is consistent with Part B.

Required Actions/Next Steps

No action is required.

Critical Element 2: Data Reflect Actual Practice and Performance

Does the State have procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance?

Verification Visit Details and Analysis

MASSDE ensures that data it collects and reports reflect actual practice through a series of checks and balances and training of personnel at the State and local level. At the local level, data managers review data to ensure its accuracy and follow-up at the building level when anomalies occur. Data managers are trained yearly and have access to a variety of tools to ensure that the data they submit are complete and accurate. Local superintendents are required to certify the accuracy of data reports submitted to the State. State information personnel review the data reports and look for unusual or inconsistent data. If, for example, a large urban district reports that it has no suspensions or expulsions, State staff contact the district to ensure that its reports are accurate. PQA personnel also review data submitted by LEAs and use this information as part of the monitoring review to determine its accuracy. MASSDE selects a sample of records for students with disabilities and compares data in the records with the data in the data system for those students.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes, with the exception of data on timely correction of noncompliance, timely complaint resolutions, and adherence to due process timelines, the State has procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance. OSEP cannot, however, without conducting a review of data collection and reporting policies at the local level, determine whether all public agencies in the State implement the State’s data collection and reporting procedures in a manner that reflects actual practice and performance.

Required Actions/Next Steps

No action is required.

Critical Element 3: Integrating Data Across Systems to Improve Compliance and Results

Does the State compile and integrate data across systems and use the data to inform and focus its improvement activities?

Verification Visit Details and Analysis

The State uses its data systems for continuous improvement, monitoring, technical assistance, and ongoing support for LEAs. LEAs use data to develop local improvement plans and to direct professional development activities. Each LEA has a “data profile” that is readily accessible on MASSDE’s website. MASSDE utilizes the data to make determinations regarding LEA performance for its educational reform and accountability system. In addition, data is integral in driving State monitoring visits and issues that will be addressed during the mid-cycle monitoring reviews. MASSDE makes decisions related to professional development, including Summer Professional Development Institutes, Leadership Academies, and discretionary grant programs based on the data it collects.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State compiles and integrates data across systems and uses the data to inform and focus its improvement activities.

Required Actions/Next Steps

No action is required.

III. Fiscal System

Critical Element 1: Timely Obligation and Liquidation of Funds

Does the State have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds?

Verification Visit Details and Analysis

During interviews with staff from SEPP and financial services, and review of additional written documentation, the State reported that it awards funds to its LEAs for a 12-month grant period that runs from September 1 to August 31 of the following year, provided the LEA has an approved application. The State also reported that if an LEA has failed to obligate all funds by the end of the grant period (generally August 31 of the following year), the State’s practice is to require its LEAs to return unexpended funds to the SEA within 60 days of the end of the grant period (generally by October 31 of the following year). The State explained to OSEP that the purpose of this practice is to minimize the amount of funds that the State would be required to return to the Federal government at the conclusion of the Tydings period. The State also explained that MASSDE uses the time, approximately a year, for SEA expenses that are time limited, like State staff salaries or different projects within units of MASSDE, rather than redistributing the funds back to LEAs. They reported the returned amount for special education from LEAs amounts to approximately \$300,000 to

\$400,000 per year. OSEP confirmed through the U.S. Department of Education's Grants Administration and Payment System that Massachusetts expended all of its FY 2004 and FY 2005 Part B of IDEA funds in a timely manner. Therefore, OSEP believes that MASSDE ensures the timely liquidation of Part B of IDEA funds at the conclusion of the period of availability of those funds. However, for the reasons explained below, OSEP finds that MASSDE's procedures requiring LEAs to return unobligated funds that the State has distributed to LEAs by formula under Part B of the IDEA to MASSDE up to 11 months prior to the end of the period of availability of those funds is inconsistent with 34 CFR §76.709 of the Education Department General Administrative Regulations (EDGAR).

Under 34 CFR §76.709(a), which implements section 421(b) of the General Education Provisions Act (GEPA), 20 U.S.C. 1225(b), also known as the Tydings Amendment, "[i]f a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the funds during a carryover period of one additional fiscal year." Section 76.709(b) requires the State to return any carryover funds not obligated by the State or its subgrantees to the Federal government at the conclusion of the carryover period. MASSDE's practice of restricting the period of availability of funds awarded to its LEAs on a formula basis is inconsistent with the Tydings Amendment because the Tydings Amendment applies to grant funds at the SEA level as well as to subgrant funds at the LEA level.

Under a State-administered program such as Part B of the IDEA, where States are required to distribute subgrant funds to LEAs, the Tydings Amendment allows States and subgrantees to obligate grant funds not only during the fiscal year for which those funds are appropriated, but also during the succeeding fiscal year. For a program such as Part B of the IDEA, which is forward-funded, funds must remain available to the State and its subgrantees – in this case, LEAs – for obligation from July 1 through September 30 of the second fiscal year (27 months) if the funds become available on July 1; or from October 1 through September 30 of the second fiscal year (24 months) if the funds become available on October 1. Because the Tydings Amendment applies to these subgrants at the LEA level, it is inconsistent with the Tydings Amendment for MASSDE to impose a requirement that LEAs return unobligated funds within 60 days of the conclusion of the first 12-month period of availability of those funds.

OSEP Conclusions

Section 76.709 of EDGAR, which implements section 421(b) of GEPA, 20 U.S.C. 1225(b)(1), permits States and their subgrantees to obligate grant and subgrant funds for one additional fiscal year following the fiscal year in which Congress appropriated those funds. Funds under Part B of the IDEA, which are distributed on a formula basis, are available for obligation by the State and its subgrantees from either July 1 or October 1 through September 30 of the fiscal year following the fiscal year in which Congress appropriated the funds.

Based on review of documents, analysis of data, and interviews with MASSDE staff, OSEP concludes that MASSDE has procedures that ensure the timely liquidation of Part B funds at the conclusion of the period of their availability. However, OSEP also concludes that

MASSDE's procedures or practices for timely obligation of Part B funds are inconsistent with 34 CFR §76.709, because they do not permit subgrant funds at the LEA level to remain available for LEAs to obligate for one additional fiscal year following the fiscal year in which Congress appropriated those funds.

Required Actions/Next Steps

Within 60 days from the date of this letter, MASSDE must provide documentation that its procedures for obligation of carryover funds under Part B of the IDEA as applied to subgrants of Part B funds at the LEA level are consistent with 34 CFR §76.709.

Critical Element 2: Appropriate Distribution of IDEA Funds

Does the State have procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State?

Verification Visit Details and Analysis

The State complies with Federal requirements in calculating subgrant allocations to LEAs and other State agencies. Each LEA that receives subgrants of Federal funds, including charter school LEAs, must provide the State with an annual assurance that it will follow Federal requirements regarding those funds. This includes an assurance regarding funds awarded under Part B of IDEA. LEAs must complete the Budget Workbook online before receiving their annual Part B grant award. The Budget Workbook has internal checks so that error messages are generated if incorrect amounts are entered. Required expenditures are already calculated and prepopulated. For example, if the LEA is required to expend 15 percent of its Part B funds on CEIS because the State found significant disproportionality in that LEA consistent with 34 CFR §300.646(a), the amount the LEA must spend on CEIS is already entered into the workbook. If there is a change in the LEA's budget during the fiscal year amounting to a variance of an approved budget line over 10 percent (e.g., salaries), the LEA is required to amend its budget, provide a justification for the amendment, and submit the amendment to the State for approval.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State. OSEP cannot, however, without collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures that ensure appropriate distribution of IDEA funds.

Required Actions/Next Steps

No action is required.

Critical Element 3: Appropriate Use of IDEA Funds

Does the State have procedures that are reasonably designed to ensure appropriate use of IDEA funds?

Verification Visit Details and Analysis

The SEPP office has both a dedicated financial officer and grants manager who work directly with program staff to ensure that IDEA funds are used appropriately. Staff participate in the preparation and approval of grants and contracts. The State codes all activity for Federal awards for tracking on the Massachusetts Management Accounting and Reporting System. All draw downs of Federal funds are performed centrally at the Comptrollers' Office. Each week, the Comptroller runs reports of the prior week's activity and draws funds in accordance with the Cash Management Improvement Act.

LEAs that expend \$500,000 of Federal funds are required to conduct a single audit in compliance with the Single Audit Act (31 U.S.C. 7501 et seq. as amended). LEAs contract these services through an independent auditing firm. The SEPP office is responsible for resolving audit findings in special education programs. MASSDE administrators reported that single audits capture more than 90 percent of the LEAs in Massachusetts. LEAs that do not meet the \$500,000 threshold are still audited through audits conducted on the budgets of cities and towns. In addition, beginning with the 2006-07 school year, the Audit and Compliance Office in MASSDE send staff to review fiscal procedures as part of the CPR and mid-cycle reviews.

The State ensures LEAs comply with the fiscal requirements of IDEA (i.e., maintenance of effort (MOE), supplanting, CEIS spending, private school and charter school spending) through its system of assurances, budget approval and amendment process, the Budget Workbook, monitoring of LEA draw downs, and internal and external audits. In addition, MASSDE issued Administrative Advisory SPED 2008-1 on August 27, 2007, in response to changes in IDEA 2004. This Advisory provided LEAs with specific guidance and direction in making the calculation necessary to meet the MOE. Each LEA that receives a grant is also required to provide an annual end-of-year report. Depending on overall grant award sizes, most LEAs are required to hire independent auditors who review grants to ensure the appropriate expenditure of Part B funds. The State has established an LEA Risk Pool, but does not utilize IDEA funds for the program.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP believes the State has procedures that are reasonably designed to ensure appropriate use of IDEA funds. OSEP cannot, however, without collecting data at the State and local levels, determine whether all public agencies in the State implement fiscal procedures that ensure appropriate use of IDEA funds.

Required Actions/Next Steps

No action is required.